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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,332	12/15/2003	John L. McLane	2871-032162	3711
28289	7590	08/29/2006	EXAMINER	
THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219			QUINN, COLLEEN M	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/736,332	MCLANE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Colleen M. Quinn	3634	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 10-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>05/14/04</u> .                                                            | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group I in the reply filed on May 2<sup>nd</sup>, 2006 is acknowledged. Groups II and III, containing claims 10-18 are withdrawn from consideration.

### ***Claim Objections***

Claim 6 is objected to because of the following informalities: in line 2 of claim 6, applicant refers to "the vent pipe flashing to the vent pipe" where "the" should be "said" as both the vent pipe flashing and vent pipe were previously mentioned. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claims 3 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Conflicting language in both claims (and vs. or) prevents clear understanding of what the applicant intends to claim. If the applicant intends for claim 3 to read, "...*wherein at least on of the primary barrier, the vent pipe cover or the secondary seal barrier comprise a bitumen material, a rubber, a polymer or a synthetic material*" then the applicant needs to clearly state that. Similarly, claim 7 claims a list in the and form rather than the appropriate or form. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Gibbs (US 4,386,488). Gibbs discloses a vent apparatus (10), comprising a primary barrier (60) having an upper surface and lower surface (Figure 3), the lower surface abutting (Figures 2 & 3) the surface from which a vent pipe (6) projects, a vent pipe cover (50) attached to and extending from the primary barrier (Figure 2), having a vent pipe cover bore (52), the ends of the vent pipe cover attached to and overlapping the lower surface of the primary barrier (Figure 3), a secondary seal barrier (8) at least partially attached to a portion of lower surface of the primary barrier (Figure 3), wherein the primary barrier, vent pipe cover and secondary barrier are all made of the same (Specification, column 5, lines 15-17) rubber or synthetic (Specification, column 4, lines 60-63) material, bonded to together (Specification, column 3, lines 40-51), more specifically by a heat fusing process (Specification, columns 5-6, lines 55-5), the vent pipe cover being formed of a tubular shape (Figure 1), the vent apparatus having an attachment mechanism (apron 24) which secures (via adhesive) the vent apparatus to the vent pipe, the lower surface portion of the primary barrier additionally attaches via adhesive (Specification, column 3, lines 40-51), to the surface from which the pipe projects (Figure 3, Specification, column 5, lines 52-54).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kosik, Jr. et al (US 5,472,241) and Lane (US 4,897,974) which both disclose key features of the applicant's claimed invention such as vent pipe flashings with a plurality of barrier layers and securement means. Applicant should also strongly consider the non-patent literature "Vent Pipe Flashing with Lead Sleeve" by Polyglass submitted by the applicant. This prior art reference contains claimed features of the applicants invention, including the primary, secondary and pipe cover barriers, adhered together, including securement means and fabricated of synthetic materials and disclosed in 1983.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Colleen M. Quinn whose telephone number is (571) 272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CMQ  
08/22/06



**RICHARD E. CHILCOT, JR.**  
**SUPERVISORY PATENT EXAMINER**